



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 5159-99

30 August 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL OF RECORD [REDACTED]

Ref: (a) 10 U.S.C. 1552

Encl: (1) Case summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the Navy, filed enclosure (1) with this Board requesting advancement to BM1/(E-6).

2. The Board, consisting of Mr. Silberman, Mr. Vaughan, and Ms. Hardbower, reviewed Petitioner's allegations of error and injustice on 9 August 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner's application to the Board was filed in a timely manner.

c. Petitioner reenlisted in the Navy for six years on 20 December 1993 in the rate of BM2/(E-5). On 11 April 1997 he received nonjudicial punishment (NJP) for several instances of disobedience, dereliction of duty, and use of provoking speeches and gestures. The offenses involved his actions and comments towards junior female enlisted personnel who worked for him. The punishment imposed included forfeitures of pay totalling \$1,454 and a suspended reduction in rate from BM2 to BM3/(E-4). Subsequently, his appeal of the NJP was denied.

d. In a related action, recommendations for Petitioner's frocking and advancement to BM1/(E-6) were withdrawn. However,

there is no performance evaluation in the record covering the period of the NJP.

e. Subsequently, Petitioner was processed for an administrative discharge due to commission of a serious offense. On 22 May 1997, an administrative discharge board (ADB) found that he did not commit misconduct and recommended retention in the Navy. The commanding officer disagreed with the ADB's decision. However, Petitioner was retained in the Navy. He continues to serve in an excellent manner and will be eligible for retirement in 2002.

f. Attached to enclosure (1) is an advisory opinion from the Naval Personnel Command, which states, in part, as follows:

(The commanding officer) withdrew (Petitioner's) recommendation for advancement by means of a NAVPERS 1070/13 dated 11 April 1997. This page 13 actually served only to remove (his) frocking to Petty Officer First Class. In accordance with (regulation), in order to withdraw a member's advancement recommendation an enlisted evaluation with a promotion recommendation of significant problems must be prepared to withdraw a recommendation for advancement.

....A review of all of (Petitioner's) enlisted evaluations indicates he never received a recommendation below the mark of promotable. In view of this, it is recommended that (his) records be corrected to reflect he was advanced to BM1 effective 16 June 1997 with a time in rate of 1 January 1997.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action.

The Board notes that although Petitioner received NJP, an ADB found that he had not committed misconduct and retained him in the Navy. The Board also notes that the withdrawal of the recommendation for advancement was not made in accordance regulations. Given his excellent service since the NJP, the Board agrees with the recommendation contained in the advisory opinion and concludes that Petitioner should be advanced to BM1 effective 16 June 1997.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was advanced to BM1 on 16 June 1997 with a time in rate of 1 January 1997.

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

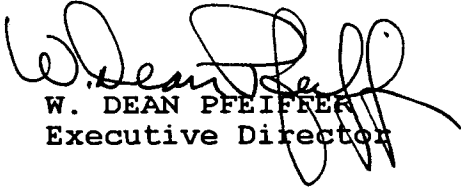
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director